"6 (1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —

(d) actions to recover any sum recoverable by virtue of any written law..."

The defence maintained that the period of limitation ran from the date when each excess payment was made and the plaintiff contended that it ran from the date of the order of the board fixing the "maximum recoverable rent".

The question which this court has therefore to decide is: In an action for the recovery of the excess payments of rent where an order fixing the rent has been made by the Rent Assessment Board, whether the period of limitation commences to run from the date when each excess payment was made or from the date of the order of the board.

From the wording of section 6(1)(d) of the Limitation Ordinance 1953, it is clear that the period of six years will begin to run from the date when the cause of action accrues.

A cause of action normally accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed. (See *Halsbury's* Laws of England, 3rd Edn., pages 193 and 194).

In *Cooke* v. *Gill*[1] Brett J. defined "a cause of action" to mean "every fact which is material to be proved to entitle the plaintiff to succeed." This definition was approved by the Court of Appeal in *Read* v. *Brown*[2] in which Lord Esher M.R. in his grounds of judgment said that it included "every fact which it would be necessary for plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

After reviewing these and other authorities including *Barton* v. *North Staffordshire Rly. Co.*[3] and *Welch* v. *Bank of England*,[4] I have come to the conclusion that the period of limitation does not begin to run until there is a complete cause of action, and a cause of action is not complete when all the facts have not happened which are material to be proved to entitle the plaintiff to succeed. In the instant case, the plaintiff's cause of action is not complete until an order is obtained from the Rent Assessment Board fixing the amount of the rent legally recoverable under the Control of Rent Ordinance. I therefore hold that the period of limitation commenced to run only from the date of the order of the board.

Counsel for defence further contended that immediately upon such an order being made by the Rent Assessment Board, it has retrospective effect; that is, the order would operate from the date when each excess payment was made. He was however not able to cite any authority in support of his proposition.

I have always understood that it is a fundamental principle of law that no statute, penal or civil, shall be construed to have a retrospective operation unless such a construction clearly appears in the terms of the Act or arises by necessary and distinct implication. See *West* v. *Gwynne*,[5] *Re Snowdon Colliery Co. Ltd.*,[6] *Lauri* v. *Renad*,[7] *Re Welsh Anthracite and Collieries Ltd.*[8] In *Re Athlumney*[9] Wright J. said: —

"Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

In the instant case, the Control of Rent Ordinance 1956 contains no provision, express or implied, giving rise to any such retrospective operation.

The defence therefore fails on both points and I accordingly give judgment for the plaintiff in the sum of $8,833 with interest at 6% per annum from date of judgment to date of realisation and costs.

Judgment for the plaintiff.

Solicitors: *Eugene Lye & Co.; Oorjitham & Lam.*

YAU TIN KWONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) November 5, 1969]

[Singapore — Magistrate's Criminal Appeal No. 181 of 1969]

Import and Export — Importing prohibited goods — "Import" — Meaning of — Onus of proof on accused to show that he intended to take out prohibited goods on same vessel on which it was brought to Singapore — Quantum of proof — Issue estoppel — Whether available in criminal case — Validity of sanction — Sentence — Default sentence for non-payment of fine — Prohibition of Imports Order, 1950, order 2 (1) — Control of Imports and Exports Ordinance (Cap. 214), s. 2.

Customs and Excise — Prohibited goods — Concealing of — Customs Ordinance, 1960, s. 116 (1) (i).

Evidence — Onus — Balance of probabilities as test — Issue estoppel — Whether can be relied on in criminal case.

Criminal Law and Procedure — Prosecution — Sanction — Whether invalid by reason of officer signing having ceased to hold office.

This was an appeal against the decision of a district judge who found the appellant guilty of: (1) importing prohibited goods, to wit gold, an offence under order 2 (1) of the Prohibition of Imports Order, 1950; (2) concealing the prohibited goods, an offence under section 116 (1) (i) of the Customs Ordinance, 1960. On the appeal it was argued, *inter alia:* (1) the district judge had misdirected himself in law upon the burden of proof required of the appellant to discharge the onus placed upon him by law; (2) the district judge erred in law in admitting evidence that the appellant attempted to bribe the two customs officers when they were conducting a search of his cabin, which evidence was highly prejudicial to the appellant and should not have been admitted as the appellant had been acquitted on the charges under the Prevention of Corruption Ordinance which had earlier been withdrawn; (3) the sanction for the prosecution of the appellant was invalid as it was given by a person who had since signing it ceased to be an Assistant Comptroller of Customs.

Held, dismissing the appeal: (1) in this case it was clear from the grounds of decision the district judge correctly adopted the principle of the balance of probabilities as a test for deciding the onus on the appellant;

(2) assuming that an accused person can rely on issue estoppel in a criminal case, issue estoppel did not arise in

this case as the acquittal was consequential on the withdrawal of the charge by the prosecution and not because the court had made certain findings of fact in favour of the appellant;

(3) the sanction issued in this case remained effective and was not spent, despite the fact that the officer who signed the sanction had ceased to be an Assistant Comptroller of Customs;

(4) the appeal against conviction must therefore be dismissed, but the district judge had erred in directing that the appellant suffer imprisonment of one year in default of payment of fine of $10,000 on the first charge and therefore the terms of imprisonment to be suffered by the appellant in default of the payment of the fine of $10,000 on the first charge and the fine of $5,000 on the second charge should be varied to one of six months on the first charge and one year on the second charge.

[Editorial Note: In *Public Prosecutor* v. *Lee Siew Ngock* [1966] 1 M.L.J. 225 per MacIntyre J. at p. 229: "I see no reason why the principle (of issue estoppel) should not be applied in respect of those criminal proceedings where the issues are well defined and easily ascertainable."]

Cases referred to:-

(1) *Sambasivam* v. *The Public Prosecutor, Federation of Malaya* [1950] M.L.J. 145 at p. 157.

(2) *Connelly* v. *Director of Public Prosecutions* [1964] 2 All E.R. 401 at pp. 422, 435.

(3) *R.* v. *Carr-Braint* [1943] 2 All E.R. 156.

(4) *Public Prosecutor* v. *Yuvaraj* [1968] 1 M.L.J. 238, on appeal to the Privy Council, [1969] 2 M.L.J. 89.

MAGISTRATE'S CRIMINAL APPEAL.

J. B. Jeyaretnam for the appellant.

Tommy Neo (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chua J.: This is an appeal from the decision of a district judge who found the appellant guilty of (1) importing prohibited goods to wit gold, an offence under Order 2(1) of the Prohibition of Imports Order, 1950, and (2) concealing the prohibited goods, an offence under section 116(1)(i) of the Customs Ordinance, 1960.

The prosecution's case was shortly this. On the 9th May, 1968, the motor vessel "Kuala Lumpur" arrived from Jeddah. The appellant was employed as No. 1 Motorman on the vessel at a salary of about Singapore $260 per month.

That day at about 9.40 a.m. a party of customs officers boarded the vessel which was berthed at the wharf of the Port of Singapore Authority. Sometime at about 12 noon two customs officers, Lee Cheng Kiat and Geoffrey Sim, went into the cabin of the appellant. The appellant was alone in the cabin. Lee Cheng Kiat asked the appellant if he had anything in the nature of tobacco, liquor, opium or gold to declare and when the appellant gave a negative reply Lee Cheng Kiat commenced to search the cabin while Geoffrey Sim stood outside the door of the cabin. When Lee Cheng Kiat started to search, the appellant took out a $10 note from a drawer and offered it to Lee Cheng Kiat saying "Yam Char" which Lee Cheng Kiat understood to mean "coffee money". Lee Cheng Kiat declined. The appellant produced another $10 and offered the $20 to Lee Cheng Kiat who again refused it. The appellant added another $10 but Lee Cheng Kiat rejected it and the appellant added another $10 and offered the $40 to Lee Cheng Kiat who again rejected it. At that stage Geoffrey Sim walked into the cabin and the appellant offered the $40 to him instead but Geoffrey Sim turned it down warning the appellant to desist. The search went on. At about 12.30 p.m. Ng Kok Kee, Assistant Superintendent of Customs, entered the cabin. At about 1 p.m. Lee Cheng Kiat unscrewed the toilet cabinet which was attached to the wall of the cabin. When he dislodged the back partition of the cabinet he found 165 bars of gold hidden inside a secret compartment of the cabinet. Lee Cheng Kiat continued the search and at about 2 p.m. he found, hidden behind a secret compartment of the mirror which was attached to the wall, 26 large gold coins and 105 small gold coins. After questioning the appellant Ng Kok Kee arrested the appellant and the appellant and the gold were taken to the Customs Office. The cabin of the appellant was locked and Ng Kok Kee kept the key. At 4.55 p.m. the same day, two customs officers, Lim Tat Liong and Tan Teck Hye, on the instructions of Ng Kok Kee, again searched the appellant's cabin. Lim Tat Liong found a piece of paper with writing on it (Ex. P 24) in the second drawer of the chest of drawers amongst some papers.

On Ex. P 24 was a name in Chinese characters which according to the court Chinese interpreter reads "Shii Ming Tian" in Mandarin and "Chee Beng Thiam" in Hokkien. The Interpreter said that the name "Koh Beng Thiam" in Mandarin could be "Shii Ming Tian" phonetically and that he would connect "Shii Ming Tian" with "Koh Beng Thiam" phonetically.

On Ex. P 24 was also an address written in English, "33-35 Tanjong Pagar Road, Singapore 2." Evidence was adduced that No. 33-35 Tanjong Pagar Road was the address of Kim Bian Seng Co. Ltd. One of the objects of the said company, according to its memorandum of association, was "to carry on business as bullion merchants, and to buy, sell, import, export and deal in gold, silver and precious metals of all kinds, coined or uncoined". One of the directors of the said company was one Koh Beng Thiam.

On the 9th May, 1968 at about 10.30 p.m. a statement was recorded from the appellant by R. Vaidgnathan, Superintendent of Customs, in which the appellant said that all the gold found was his and that he had bought it at Jeddah and that he was taking it to Hong Kong to sell and he denied knowledge of Ex. P 24.

The next day Ng Kok Kee recorded a further statement from the appellant in which the appellant again admitted ownership of the gold.

Evidence was also led to show that the appellant had not received any licence to import gold on the 9th May, 1968.

The appellant's case was shortly this. He is a resident of Hong Kong. In November, 1967, he left Hong Kong in the vessel for Singapore. From Singapore the vessel picked up pilgrims for Mecca and

proceeded to Jeddah. By the 9th May, 1968, the vessel had made 3 trips to Jeddah and back to Singapore. He purchased the gold bars and gold coins at Jeddah from a middle-aged Arab. He hid them in the compartments where they were discovered by the customs officers. The reason was because he wanted to keep it a secret lest he be murdered or sacked if discovered by the captain. His intention was to bring the gold back to Hong Kong.

On the 9th May, 1968, at about 12 noon he was on his way to his cabin when the two customs officers came to him. The customs officers said that they wanted to search his cabin. He opened the door of his cabin and the customs officers entered the cabin and searched the cabin. He was not asked if he had any tobacco, liquor, opium or gold. The customs officers found the gold bars and gold coins which he had hidden. He was asked if the gold belonged to him and he said it was his. He was arrested and taken to Customs Office where a statement was recorded from him. He said that Ex. P 24 was not in his handwriting and that he had not seen it before. His chest of drawers had a lock in the first drawer in which he kept money, stationery and letters. He kept only clothings in the other drawers.

To put it shortly the evidence adduced by the prosecution clearly showed that the gold was brought into Singapore by the appellant and that the appellant hid it in his cabin and that gold was in the category of "prohibited goods" the importation of which was prohibited without a special licence. On the other hand the appellant in his evidence, while admitting that the gold was his and that he hid it, said that he had no intention of taking it out of the vessel and that he intended to take the gold out of Singapore in the same vessel to Hong Kong to sell it there.

The main question in this case is, had the appellant imported the gold into Singapore?

"Import" is defined in section 2 of the Control of Imports & Exports Ordinance, Cap. 214, as follows:

> "Import" with its grammatical variations and cognate expressions means to bring or cause to be brought into the Republic by land, water or air from any place which is outside the Republic but does not include the bringing into the Republic by water or air of any goods which it is proved to be intended to be taken out of the Republic on the same vessel or aircraft on which they were brought into the Republic without any landing or transhipment within the Republic."

The onus was therefore on the appellant to show that he intended to take the gold out of Singapore on the same vessel on which it was brought into Singapore.

On behalf of the appellant three main submissions are relied on.

The first main submission made by his counsel is that the district judge erred in law in admitting evidence that the appellant attempted to bribe the two customs officers when the customs officers were conducting a search of his cabin which evidence was highly prejudicial to the appellant and resulted in a substantial miscarriage of justice. To follow counsel's argument it is necessary to set out the course of events which had taken place before the conviction of the appellant.

The appellant was charged with importing the gold on the 17th May, 1968, before a district court and he claimed trial. On the 27th September, 1968, when the case came on for trial the prosecution applied for two additional charges under the Prevention of Corruption Ordinance, 1960, against the appellant for attempting to bribe the two customs officers, Lee Cheng Kiat and Geoffrey Sim, to be put in and for these charges to be stood down and for the trial on the charge of importing the gold to proceed. These two additional charges were put in and marked, they were not read to the appellant and no plea was taken. At the end of the prosecution's case the district judge acquitted and discharged the appellant on the charge of importing the gold. The prosecution then applied to withdraw the two charges under the Prevention of Corruption Ordinance and offered no evidence on the two charges and the district judge acquitted and discharged the appellant on those two charges. The prosecution appealed against the acquittal of the appellant on the charge of importing the gold and the High Court ordered a retrial. The appellant appeared again before the district court on the 15th May, 1969, and the case was fixed for hearing on the 27th June, 1969. On the 27th June, 1969, an additional charge under Section 116(1)(i) of the Customs Ordinance for concealing the prohibited goods was preferred against the appellant. The case was then adjourned and the trial commenced on the 17th July, 1969, and the appellant was found guilty of both the charges on the 31st July, 1969. It is against this conviction that the appellant now appeals.

Counsel for the appellant submits that the foundation of his submission is that the acquittal of the appellant by the district court of the attempted bribery charges is said to have involved a finding by that court that the appellant did not attempt to bribe the two customs officers. On that premise he argues that the appellant was entitled to rely on the doctrine of "issue estoppel" and in consequence the evidence that the appellant attempted to bribe the two customs officers ought to have been excluded at the retrial because of the acquittal.

It is now necessary to consider the doctrine of issue estoppel. Counsel for the appellant has cited no local case in which this doctrine has been applied. He, however, cited the Privy Council case of *Sambasivam* v. *The Public Prosecutor, Federation of Malaya*.[1] In that case the appellant had been charged with two offences, carrying a firearm and being in possession of ammunition. He was acquitted of the second but a new trial was ordered with regard to the first. At the new trial, the prosecution relied on a statement which was purported to have been made by the appellant but which he denied making and which had not been put in evidence at the first trial. In the statement the appellant said that he was both carrying a firearm and in possession of ammunition. The assessors were not informed when the statement was admitted that the appellant had been acquitted on the charge relating to the ammunition.

The Board had to consider the effect on the alleged admission of the fact the appellant had already been acquitted of being in possession of ammunition. Lord MacDermott, who delivered the opinion of the Board, said (at p.151):

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim *res judicata pro veritate accipitur* is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial."

The Board advised that the conviction should be quashed because the failure to inform the assessors of the fact that the appellant had been acquitted on the charge relating to the ammunition was to render the trial unsatisfactory in a material respect and as it was uncertain what the assessors would have done if they had been informed of the acquittal and had realised that a part of the statement could not be relied on.

Whether or not a plea of issue estoppel may be validly raised in a criminal court in England has not yet been definitely decided. (see *Connelly* v. *Director of Public Prosecutions*[2]). Apparently the plea has been raised and accepted in the Commonwealth and the United States of America.

The doctrine was discussed in *Connelly* v. *Director of Public Prosecutions* where Lord Morris said (at p. 422):

"It was recognised by Lord MacDermott, in giving the judgment of the Board in *Sambasivam* v. *Public Prosecutor, Federation of Malaya*, that a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

'The maxim *res judicata pro veritate accipitur* is no less applicable to criminal than to civil proceedings.'

This is in tune with what has been laid down in a number of important judgments in Australia. Thus in *Mraz* v. *R. (No. 2)* it was stated in the judgment of the High Court that the principle of issue estoppel is

'to treat an issue of fact or law as settled once for all between the parties if it is distinctly raised and if the judgment pronounced implies its determination necessarily as a matter of law.'

So, too, in *Brown* v. *Robinson* it was said in reference to issue estoppel that it depended on an issue or issues having been distinctly raised and found in a former proceeding:

'Once this is done, then, so long as the finding stands if there be any subsequent litigation between the same parties no allegations legally inconsistent with the finding may be made by one of them against the other.' "

Lord Devlin in the same case said (at p. 435):

"*R.* v. *Ollis* is also in point as a case which illustrates the limits of the proposition and of the extent to which a previous acquittal can be used. In this case the prisoner was charged on two indictments with offences of obtaining money by means of worthless cheques from different persons. He was acquitted on the first indictment. On the trial of the second indictment the person whom he was alleged to have defrauded on the first indictment was called to give evidence of the transaction in order to assist in the proof of guilty knowledge on the second indictment. Objection was taken to this evidence on two grounds, the first being that irrespective of the acquittal on the first indictment the evidence was inadmissible and the second being that, if otherwise admissible, it ought to have been excluded because of the acquittal. There was a difference of opinion in the Court of Crown Cases Reserved on the first ground, the majority holding the evidence to be admissible. All nine judges overruled the objection on the second ground. Lord Russell C.J. said:

'It is clear that there was no estoppel; the negativing by the jury of the charge of fraud on the first occasion did not create an estoppel; nor is there any question arising upon the maxim *nemo debet bis puniri pro uno delicto*. The evidence was not less admissible because it tended to show that the accused was, in fact, guilty of the former charge.'

Darling J., said:

'... the defendant was no *bis vexatus*, for I feel sure that those words are not to be understood as meaning that a man is not to be more than once annoyed by the same evidence.' I turn now to consider the doctrine of issue estoppel. The difference between issue estoppel and the *autrefois* principle is that while the latter prevents the prosecution from impugning the validity of the verdict as a whole, the former prevents it from raising again any of the separate issues of fact which the jury have decided, or are presumed to have decided, in reaching their verdict in the accused's favour. This form of estoppel is of course well known to the civil law where separate issues of fact are frequently decided by a judge or by a jury on a special verdict. There is no trace so far of its application to criminal matters."

Does issue estoppel avail an accused person in this country? I do not find myself, in the circumstances of the present case, called on to give a definite answer to that question. I will, however, assume for the purpose of this case that it does.

For issue estoppel to arise at all there must have been distinctly raised and inevitably decided the same issue in earlier proceedings between the same parties. I find that these conditions are not fulfilled in the present case. There had been no trial on the two charges of attempted bribery and consequently no issue had been distinctly raised and decided. The acquittal was consequential on the withdrawal of the charges by the prosecution and not because the court had made certain findings of fact in favour of the appellant.

I now turn to the second main submission. It is submitted that the district judge misdirected himself in law upon the standard of proof required of the appellant to discharge the onus placed upon him by the law.

As I have earlier mentioned the onus was on the appellant to satisfy the court that he intended to take the gold in question out of Singapore on the same vessel on which it was brought into Singapore.

What is the burden of proof cast upon the appellant? It is submitted that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt and that the burden may be discharged by evidence satisfying the court of the probability of that which the accused is called upon to establish: (*R.* v. *Carr-Braint*,[3] *Public Prosecutor* v. *Yuvaraj*[4]).

I agree with the submission of counsel for the appellant. The burden of proof on the appellant in this case is a persuasive burden and that such burden

is discharged by evidence to satisfy the court of the probability of the existence of the fact which the Ordinance requires him to prove.

The complaint of the appellant is that the district judge had applied the wrong test in that the district judge had found the appellant guilty because the district judge found that the appellant could not be believed which is a higher test than the test of the balance of probabilities. In support of this contention that the district judge applied the wrong test the following passages in the district judge's grounds of decision were cited:

First, "I was of the opinion that the appellant must then show that it was his intention to take the gold in question out of Singapore on the same vessel which conveyed him and the gold into Singapore."

Second, "It was therefore pertinent to observe that having considered the whole of his testimony and the fact that he was impeached I found that he could not be believed."

It is to be noted that in their addresses to the district judge, counsel for the prosecution and counsel for the defence addressed on the burden of proof of the appellant and both counsel referred to the case of *Public Prosecutor* v. *Yuvaraj*.

The district judge in his grounds of decision also said:

"6. At the close of the case for the defence I scrutinised all the evidence so adduced carefully. I reached the following conclusion.

7. The appellant struck me as an unreliable and untruthful witness. His demeanour and conduct in court confirmed the view so arrived at after a careful scrutiny of his evidence which contained so many discrepancies and improbabilities which go to the root of the matter.

8. To name a few important ones ...."

The district judge then in paragraph 8 and in the next eight paragraphs, paragraphs 9 to 16, enumerated the discrepancies and improbabilities in the evidence of the appellant. The district judge then went on and said:

"17. Last but not least, from his evasive conduct and demeanour in court I gathered the impression that he was not a truthful and reliable witness. At one stage the learned Deputy Public Prosecutor successfully impeached the credit of the appellant."

Then comes this passage which was cited by counsel for the appellant and from which counsel submits can be gathered the quantum of proof which the district judge required of the appellant:

"18. It was therefore pertinent to observe that having considered the whole of his testimony and the fact that he was impeached I found that he could not be believed. On the other hand the prosecution witnesses stood up very well under the thorough and somewhat exhausting cross-examination without faltering. I found that they were truthful and reliable witnesses. I had no hesitation in accepting their evidence."

The district judge then concluded in these words:

"19. At the close of the whole case I was satisfied beyond any reasonable doubt that the appellant was guilty as charged. He was accordingly convicted and sentenced."

With all due respect to counsel for the appellant I do not agree that the two passages cited by him show that the district judge convicted the appellant merely on the ground that he did not believe the appellant.

The first passage was said by the district judge after he had outlined the evidence adduced by the prosecution and after he had considered the meaning of "Import" as defined in the Ordinance and he was stating there the onus that was on the appellant; he did not set out the quantum of proof that was required of the appellant.

In the second passage the district judge was expressing his view on the veracity of the appellant after considering the discrepancies and improbabilities in the appellant's evidence and the fact that the credit of the appellant had been impeached.

The district judge dealt with a number of what he described as "the discrepancies and improbabilities which go to the root of the matter". It seems clear from the grounds of decision that the district judge adopted the principle of the balance of probabilities as a test for deciding the onus on the appellant.

I now come to deal with the third main submission made on behalf of the appellant and it is this:

"The sanction for the prosecution of your petitioner on the 17th July 1969 on the first charge was given by a person other than a person authorised by law to sanction the prosecution and the trial therefore was a nullity as the court had no jurisdiction to take cognizance of the first charge".

Section 29 of the Control of Imports & Exports Ordinance provides: "No Court shall take cognizance of any offence except with the sanction of the Controller".

A sanction under section 29 was signed on the 10th May, 1968, by an acting Assistant Comptroller of Customs authorising the institution of a prosecution against the appellant for importing prohibited goods to wit the gold bars and gold coins. There is no dispute that at that date the sanction was signed by a person duly authorised. This sanction was tendered at the first trial of the appellant in September, 1968. The same sanction was tendered at the retrial of the appellant on the 17th July, 1969, but by that date the officer who signed the sanction had already ceased to be an acting Assistant Comptroller of Customs.

It is submitted that when the sanction was tendered on 17th July, 1969, the sanction was spent and no longer effective as the person who signed it had ceased to be an acting Assistant Comptroller of Customs. It is further submitted that the retrial is a new trial and a sanction signed by a person duly authorised at the date of the retrial is required before the court could take cognizance of the offence.

In my opinion this point is without substance. A sanction remains effective and is not spent unless the period that it should remain in force is limited by statute as in the case of a sanction required under section 128 of the Criminal Procedure Code for the prosecution of certain offences. Section 128(5) provides that "No such sanction shall remain in force unless acted upon within one month from the date on which it was given". The effectiveness of a sanction under section 29 of the Control of Imports and Exports Ordinance is not so limited.

The other grounds of appeal deal with the findings of the district judge. It is submitted that the district

judge did not give sufficient consideration to the evidence adduced by the appellant and that the appellant had discharged the onus that is on him. There is no substance in the complaints of the appellant. The evidence of the appellant is highly contradictory and improbable. The appellant cannot have discharged the onus that is on him when his testimony is full of improbabilities.

On the second charge it is submitted on behalf of the appellant that the gold becomes prohibited goods only when an attempt is made to import it into Singapore and consequently the appellant is only guilty of this charge if he is guilty of the first charge i.e. guilty of importing. As my view is that the appellant is correctly convicted on the first charge I need not go into this submission. Suffice it to say that in my view there is no substance in this submission.

The appellant also appeals against the sentence. On the first charge the appellant was sentenced to six months imprisonment and ordered to pay a fine of $10,000 in default thereof to serve one year's imprisonment. On the second charge he was ordered to pay a fine of $5,000, in default thereof to serve 3 years imprisonment.

The value of the 165 gold bars, weighing 617.8 troy ounces, was about $83,878 on the 9th May, 1968. The gold merchant who was called to give evidence said that he could not give the value of the 134 pieces of gold coins weighing 41.2 troy ounces since it was controlled gold.

The sentence that can be imposed on the first charge is "for a first offence with a fine not exceeding $10,000 or three times the value of the goods in respect of which such offence was committed (whichever may be the greater) or with imprisonment of either description for a term not exceeding twelve months or with both."

The penalty for the second offence is a fine not exceeding $5,000.

It is submitted that the sentences imposed by the district judge are manifestly excessive.

It can hardly be said that in the circumstances of this case, the sentences are manifestly excessive. If the district judge erred at all he erred in favour of the appellant on the first charge. This type of offence is easy to commit but extremely difficult to detect. The gold was so ingeniously concealed that the customs officers took two hours to discover it. I agree with the district judge when he said that the sentence in this case should be a deterrent one.

However, the district judge has erred when he directed that the appellant suffer imprisonment of one year in default of payment of the fine of $10,000 on the first charge.

Unlike the Customs Ordinance, there is no express provision relating to imprisonment for non-payment of fine in the Control of Imports & Exports Ordinance. Therefore the provisions of section 267 of the Criminal Procedure Code are applicable and by section 267 (c) (i) the maximum term of imprisonment the court can direct the appellant to suffer in default of payment of the fine of $10,000 is six months.

Although by section 105 of the Customs Ordinance, 1960, the court has the power to impose three years imprisonment in default of payment of a fine of $5,000 nevertheless that section provides that the period of imprisonment imposed "shall be such period as in the opinion of the court will satisfy the justice of the case". I am of the view that, considering that the first charge is a more serious charge and taking into consideration that if the fine on the first charge is not paid the total period of imprisonment the appellant would have to suffer would be one year, a period of one year's imprisonment on the 2nd charge would satisfy the justice of this case.

In the result the appeal against conviction and sentence is dismissed. The terms of imprisonment the appellant is to suffer in default of payment of the fine of $10,000 on the first charge and the fine of $5,000 on the second charge are varied to one of six months on the first charge and one year on the second charge.

Appeal dismissed.

Solicitors: *J. B. Jeyaretnam & Co.*

ABANG v. SARIPAH

[A.C.J. (R.T.H. Lee J., William Hardin & Anyau anak Bakit, Assessors) November 6, 1969]

[Sibu — Native Court of Appeal, Civil Appeal No. 1 of 1969]

Native Customary Law — Temuda Land — Dayak removing to another district — Loss of rights in land — Native Customary Laws Ordinance (Sarawak, Cap. 51).

Land Laws — Temuda Land — Dayak removing to another district — Loss of rights in land.

In this case the appellant and the respondent claimed a piece of temuda land. The land in question was originally occupied by the respondent but she had moved out of the land to Sibu district more than 20 years ago. The appellant alleged that the land had been sold to him by the brother-in-law of the respondent. The Resident's Native Court, on appeal, held that as the respondent had moved to another district, she had lost her rights to the land. Further she had no power to alienate it. The land in dispute must therefore be declared as "tanah orang pindah" and left for the benefit of the people in the area.

Held, dismissing the appeal: (1) the Resident's Native Court was correct in its decision that the respondent had by removing to another district lost her rights to the land and that she had no right or power to alienate it;

(2) upon the facts in this case neither the appellant nor the respondent has any claim to the land under customary rights.

Cases referred to:-

(1) *Udin anak Lampon* v. *Tuai Rumah Utom* [1949] S.C.R. 3.

(2) *Nyalong* v. *The Superintendent of Lands & Surveys, 2nd Division, Simanggang* [1967] 2 M.L.J. 249.

(3) *Sumbang anak Sekam* v. *Engkarong anak Ajah* [1958] S.C.R. 95.

CIVIL APPEAL.

Parties not represented.

Cur. Adv. Vult.